

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)	
)	
Applications for Consent to the Transfer)	
of Control of Licenses and Section 214)	
Authorizations from)	CC Docket No. 98-141
)	
Ameritech Corporation, Transferor, to)	
)	
SBC Communications, Inc., Transferee)	

**JOINT COMMENTS OF GST TELECOM INC., KMC TELECOM INC., LOGIX
COMMUNICATIONS CORPORATION AND RCN TELECOM SERVICES, INC.**

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Dated: July 19, 1999

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SUMMARY

To protect the public interest from a massive concentration of market power in the local exchange telecommunications market, simple but substantial modifications must be made to the conditions proposed by SBC Communications, Inc. and Ameritech Corporation for their pending merger application. Many of the proposed conditions include inadequacies and loopholes that would undermine the public interest objectives sought by the Commission. The Commission, if it is to approve the merger, must strengthen the proposed conditions as set forth herein, and it must ensure the viability of appropriate enforcement mechanisms to protect the public interest going forward.

The special measures designed to protect the market from this merger should remain in effect for at least ten years. To ensure that SBC/Ameritech undertakes compliance with the complex merger conditions in earnest, the Commission should require more of the conditions to be satisfied prior to the closing of the merger while the Applicants have a stronger incentive to cooperate. For example, the Commission should require the Applicants to file a proposed collocation tariff and an OSS Plan, subject to notice and comment, prior to approval of the merger.

Many of the Applicants' proposed conditions require only compliance with existing Commission regulations. However, the magnified anticompetitive powers of a merged SBC/Ameritech demand heightened regulation. For example, the Commission should enact special protective measures by requiring to provide Enhanced Extended Loops at TELRIC prices and to provide immediate and permanent access to CLECs to cabling in multi-tenant installations.

Several of the proposed conditions include loopholes that undermine the public interest objectives sought by the Commission. For example, the proposed carrier-to-carrier promotions are an important step toward reasonable interconnection and resale rates, but to be effective these promotions must be widely available and applicable to all services. Similarly, SBC/Ameritech's promise to supply loop pre-qualification information will only serve its purpose of facilitating CLEC deployment of advanced services if the loop information is unrestricted and precise.

These concerns and additional specific deficiencies in the proposed conditions are described below. At a minimum, these changes must be made to the proposed conditions to promote the Commission's pro-competitive objectives and to protect the public interest.

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GST Telecom Inc., KMC Telecom Inc., Logix Communications Corporation and RCN Telecom Services, Inc. (collectively, ACommenters≡), by undersigned counsel, pursuant to the Commission=s July 1, 1999 Public Notice in this docket, file these Joint Comments on the conditions proposed by SBC Communications, Inc. and Ameritech Corporation (AApplicants≡) for their pending merger application.^{1/} The Commenters are competitive local exchange carriers (ACLECs≡) operating in portions of the Applicants= service territories.

The Commenters applaud the substantial efforts that Commission staff has made in developing the proposed conditions. However, many of the conditions as proposed by the Applicants will not significantly help achieve, and could undermine, the public interest objectives sought by the Commission.

^{1/} See *Public Notice*, Pleading Cycle Established for Comments on Conditions Proposed by SBC Communications, Inc. and Ameritech Corporation For Their Pending Application For Transfer of Control, CC Docket No. 98-141, DA 99-1305, released July 1, 1999.

Many of the proposed conditions merely require that the Applicants comply with existing laws and regulations. To guard against the dangers to competition posed by the concentration of market power that could be wielded by a merged SBC/Ameritech, the Commission, if it is to approve the merger, should strengthen the proposed conditions as set forth herein, and it establish appropriate enforcement mechanisms to help assure that the letter and spirit of the conditions will prevail.

I. The Duration of the Merger Conditions Must Be Lengthened

The Commenters are concerned by the possibility that the adverse effects of the merger would likely outlive the proposed three-year duration of most of the merger conditions. As the three years since the adoption of the Telecommunications Act of 1996 have demonstrated, the tremendous market power of the incumbent carriers (AILECs) is slow to erode. Foremost among the reasons for the slow pace of change has been the ability of ILECs to exercise their market power to protect bottleneck resources essential to competitors. A merged SBC/Ameritech mega-carrier threatens to wield even greater anticompetitive strength and demands careful public regulation.

The merger's potential for substantial harm to competition would not be offset by the proposed temporary conditions. The Commenters therefore propose that all of the merger conditions be established as preconditions and/or remain effective for ten years after implementation. Extended applicability of the conditions will substantially improve the prospect that the potential harms of the proposed merger will not outlive the conditions.

II. The Federal Performance Parity Plan Should Include All of the Texas Standards

Applicants propose a Federal Performance Parity Plan^{1/} comprising a small fraction of the performance measurements developed in the Texas collaborative process.^{1/} Many of the excluded Texas measures are vital to the competitive industry. In the absence of compelling justifications from the Applicants, a merged SBC/Ameritech should be required to implement *all* of the performance standards adopted by the Texas Commission throughout its region. If the Applicants demonstrate that specific standards are not feasible in specific states, then they should receive a waiver for that state only, rather than eliminating the standard for all states.

The Commission should also require that the proposed penalties be assessed per violation, *per day*, not just per violation. Additionally, to ensure the long-term promotion of competition, the performance standards should be enforced for ten years, as opposed to the Applicants' proposed term of 45 months after the Merger Closing Date.

III. The Collocation Tariff and Plan Should be Subject to Additional Review

Essentially, the proposed collocation conditions require the Applicants only to comply with existing rules. The only additional responsibility imposed upon SBC/Ameritech is to retain an independent auditor to verify compliance with the collocation rules.

^{2/} *Investigation of Southwestern Bell Telephone Company's Entry into Texas InterLATA Telecommunications Market*, Project No. 16251 (Tex. P.U.C. April 26, 1999) (*ATexas Collaborative Process MOU*).

The Commission should provide an opportunity for CLECs to comment on the proposed collocation terms and seek appropriate changes to those terms *prior* to the approval of the merger. This would provide a greater assurance of compliance with the requirements of the *Collocation Order*^{3/} than the proposed audit.

Additionally, the Commission should establish provisioning intervals for collocation. Collocation provisioning has become a critical issue due to ILEC delays that prevent CLECs from entering a market. Texas offers a promising starting point for the creation of SBC/Ameritech provisioning intervals. In 1998, the Texas Public Utility Commission required SBC to tariff intervals of ten business days for notification of availability of space and as few as fifteen business days for final price quotations, and SBC will be required to establish even shorter quotation intervals and absolute construction intervals as part of the Texas collaborative process.^{4/}

The Commission should adopt additional measures to ensure the selection of an independent auditor. The Applicants propose only that the auditor shall not have been instrumental during the past two years in designing substantially all of the systems being audited. Instead, the Commission should require that the auditor not have been employed by either SBC or Ameritech in any prior capacity.

^{3/} *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147; First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48, released March 31, 1999 (*Collocation Order*).

^{4/} *Texas Collaborative Process MOU* at Attachment B, page 16.

The Commission should also require that the scope of the audit report be approved before, not after, the merger. The Commission should also provide that the audit report and underlying data be made public and offered for comment. These provisions will help to ensure the sufficiency of any conclusions in the audit report. Finally, the Commission should clarify that the audit reports will not serve as a proxy for compliance with state or federal law.

IV. The Development and Implementation of Efficient Operations Support Systems Should be a Precondition to Merger Approval

A plan for improved and more accessible electronic interfaces for Operations Support Systems (AOSS) is essential. Unfortunately, the Applicants' proposed timetable for deployment is too lengthy. To ensure that the Applicants retain an incentive to expedite the implementation of the OSS conditions, the Commission should require at least some level of implementation prior to the merger.

The Applicants' proposed timeline ostensibly shows that the OSS system will be deployed within twenty-four months of the Merger Closing Date. However, that timeframe assumes that the duration of Phase 2 will be completed in a single month.^{5/} The Applicants' description of Phase 2 includes assembling all of the CLECs operating throughout the 13 combined states at a single workshop, where it is forecast that they will overcome their long-standing differences by quickly reaching, and executing, a written agreement on all OSS deployment issues. It is clearly unlikely that Phase 2 could be completed in one-month, permitting the Applicants to postpone deployment of OSS beyond two years.

^{5/} *Proposed Conditions for FCC Order Approving SBC/Ameritech Merger (A Proposed Merger Conditions)* at ¶¶ 9-11.

The most compelling incentive for SBC and Ameritech to expedite OSS deployment would be merger approval. The Commission should therefore require that SBC/Ameritech fully implement OSS prior to merger closing.

V. Waiver of OSS Charges

The Commenters support the proposed waiver of OSS usage charges. CLECs should also be relieved of development charges for OSS. The waivers should take effect immediately upon approval of the merger and should last for a period of years after SBC/Ameritech demonstrates that the standard electronic interfaces developed under the Merger Conditions are operational throughout its region.

VI. xDSL And Advanced Services Deployment

The Commenters strongly support the proposed requirement for disclosure of information concerning the suitability of loops for provision of advanced services. The Commission should clarify that this loop pre-qualification information must include *precise* and comprehensive information for each individual loop, including the exact loop length and the presence and location of bridge-taps, load-coils, repeaters and other impediments to xDSL transmission, and it must be readily available on an electronic basis.

The Commission should reject the Applicants' proposal to impose only a nondiscrimination requirement concerning disclosure of loop pre-qualification information. CLECs must have unrestricted access to this information, regardless of the extent to which it is used by SBC/Ameritech, if they are to develop alternative market strategies and provide advanced services to customers not pursued by SBC/Ameritech. One of the most important benefits of competition is the proliferation of different market strategies that will offer a wide range of services to the widest possible range of customers. Therefore, the Commission should provide for unrestricted access to loop pre-qualification information regardless of SBC/Ameritech's own utilization of this information.

Applicants' proposed uniform interim rates for conditioning xDSL loops are significantly higher than in many areas of the country today, including some SBC states. These rates will not promote competitive provision of advanced services. The Commission should require the Applicants to file tariffs and submit cost studies prior to the Merger Closing Date. As a less preferred alternative, the Commission could implement the lowest rates offered by an incumbent carrier on an interim basis and subject the rates to a true-up provision upon the completion of a cost study.

VII. The Commission Should Defer Consideration of Structural Separation for Provision of Advanced Services to the Ongoing *Advanced Services Rulemaking*

The Applicants have proposed structural separation for provision of advanced services. This matter is properly left to the deliberative process in the *Advanced Services Rulemaking*^{6/} and should not be resolved in the context of a merger.

^{6/} *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-188, released August 7, 1998 (*Advanced Services Rulemaking*).

If, however, the Commission elects to proceed with this merger condition, it should provide that the separate affiliate will remain regulated. Additionally, if the Commission moves forward with the separate affiliate proposal, structural separation safeguards must be strengthened substantially. In particular, the Commission should reject the Applicants' proposal to permit joint marketing.^{1/} Joint marketing would allow the affiliate to unfairly leverage SBC/Ameritech's market power. The separate affiliate should not be able to use the incumbent's name or trademarks, and should not share employees, office space, customer services or officers or directors. Contrary to the Applicants' analysis, Section 272 of the Telecommunications Act is not an appropriate model for an advanced services affiliate, as it was designed to govern long-distance affiliates and only after the incumbent satisfied the rigorous conditions of Section 271.

Finally, the separate affiliate proposal will not promote competitive provision of advanced services as long as the Applicants can provide line sharing to its advanced services affiliate but not to other CLECs. The Applicants' proposal for interim line sharing fails to provide a comparable alternative to line sharing that would justify the provisioning of line sharing to the Applicants' affiliate and not to other CLECs. The provisional line sharing proposal is defective for at least three reasons: (1) the proposed 50% discount for surrogate line sharing must be modified to duplicate the rate that would be charged to the separate affiliate for line sharing^{1/}; (2) end-users receiving voice and data service over two loops could be subject to additional charges for a

^{1/} *Proposed Merger Conditions at & 27(a).*

^{8/} The Applicants have not specified the rate, if any, that would be charged to its separate affiliate for line sharing. The Applicants should be required to establish an interim rate that would be applicable to its affiliate (if any) and to CLECs for line sharing.

second line that would not be borne by customers serviced by line sharing; and (3) prospective customers who have two telephone lines and who wish to add xDSL data service may not have sufficient copper twisted pair capacity in their building to support an additional loop, a problem that would not arise with line sharing. Unless these deficiencies are addressed, the Applicants should not be permitted to offer line sharing to a separate affiliate until it is available to all CLECs.

In addition, line sharing should be available when it is technically feasible for any two carriers, including the ILEC, to share the line, as opposed to Amultiple CLECs≡ as proposed by the Applicants.

VIII. Provision of UNEs

The proposed condition that SBC/Ameritech will not be required to provide any UNEs beyond those established in the *UNE Remand Proceeding*^{1/} does not provide any additional benefit beyond that proceeding. Instead, the Commission should require the merged company to provide all current UNEs regardless of the outcome of the *UNE Remand Proceeding*. The Commenters also propose that SBC/Ameritech be required to offer Enhanced Extended Loops as a UNE at TELRIC prices, without any nonrecurring or Aglue≡ charges. Without these

^{2/} *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 & 95-185, Second Further Notice of Proposed Rulemaking, DA 99-70 (rel. April 16, 1999).

modifications, this Acondition≡ provides no assurance that the proposed merger would not harm the public interest.

IX. Carrier-To-Carrier Promotions Should Be Widely Available for All Types of Service

The Applicants propose to establish carrier-to-carrier promotions for unbundled local loops and resold lines.^{10/} These discounts, *if widely available*, would stimulate long-term competitive growth in the SBC/Ameritech region. The Commenters support these promotions but urge the Commission to ensure that they are made available for a variety of services, and not just basic residential services.

The promotional discounts should not be limited to provision of basic residential services. The Commenters share the objective of promoting competition for residential services. However, the Commission can promote competition for *both* residential and business service by requiring discount promotions for both types of service. Further, there is no reasonable justification for prohibiting the use of these promotional offerings for the provision of advanced services to customers. The Commission should foster the development of advanced services, particularly in the residential market. Therefore, this qualification should be removed from the merger conditions.

The ceiling on the number of loops and resold lines available at the promotional rate should be eliminated or substantially raised. The proposed caps represent a small percentage of the Applicants= total number of access lines. In addition, the proposed conditions do not explain how the promotional lines will be allocated between CLECs or geographically within each state.

^{10/} *Proposed Merger Conditions* at App. A at 2.

Finally, the Commenters note that the termination date of these promotions should in no way be connected to SBC/Ameritech=s entry into out-of-region markets, as this expansion is unrelated to the development of competition in its own region. This portion of the proposal should be eliminated.

X. The Most-favored Nation Provisions Must Not Be Arbitrarily Limited

The Applicants propose inconsistent and unjustifiably limited standards for the exercise of most-favored nation elections. The merger conditions should enable CLECs in any state to opt-in to or pick and choose terms from any effective, pre- or post-merger SBC/Ameritech interconnection or unbundling agreement from any state, whether arbitrated, voluntarily-negotiated or otherwise made effective by a state commission. Without any explanation, the Applicants propose to limit the availability of out-of-region agreements to arbitrated agreements, while limiting the selection of in-region agreements to those voluntarily negotiated by SBC/Ameritech *after* the merger. The Applicants= baseless attempt to restrict the availability of many agreements must be rejected.

Furthermore, CLECs wishing to interconnect with SBC/Ameritech should be able to select terms from any agreement entered into by SBC/Ameritech as a CLEC, regardless of whether such terms had previously been made available to other CLECs. The Applicants have not proposed a standard for evaluating whether a term had been made previously available, and the Commenters fear that this qualification, which itself does not offer any public benefit, could be used to thwart any CLEC=s request to select it.

XI. The National/Local Strategy Does Not Guarantee Any Public Benefits

The proposed conditions do not provide any assurance that SBC/Ameritech would provide any significant level of out-of-region local competition. Instead, the proposal requires only minimal levels of service and engaging in minimal levels of offering service in a market.

Given the weakness of these requirements and the fact that they terminate in three years, they do not provide any assurance of achieving any public interest benefits from out-of-region competition. The Commenters urge the Commission not to rely on this portion of the proposed conditions for evidence that the merger will promote the public interest.

XII. Access to Multi-unit Installations Must be Guaranteed Immediately

Access to inside building wiring is critical for the facilities-based delivery of competitive telecommunications options to consumers in multi-tenant buildings. SBC and Ameritech's monopoly access to many of these consumers is a major impediment to the development of competition for local exchange and advanced services.

Instead of proposing meaningful reform, the Applicants propose an unnecessary and dilatory trial to be conducted in a small number of buildings. Instead, the Commission should require the Applicants to provide CLECs immediate and permanent access to cabling in all residential, commercial and campus multi-unit installations where Applicants control the cables. This requirement could be satisfied by making available a single point of interface (ASPOI), most likely at the minimum point of entry (AMPOE).

A trial is not required to demonstrate the feasibility of this requirement. SBC's experience in California, where it is already required to provide access at the demarcation point in

all multi-tenant buildings, has provided more than adequate testing of the viability of SPOI access.^{11/}

Access to an SPOI must be guaranteed for all multi-tenant structures, not only buildings housing residences and small businesses. The Applicants' proposed trial unjustifiably excludes buildings that contain only medium-sized and large commercial tenants. Therefore, the Commission should require the Applicants to provide immediate and permanent access to cabling in all residential, commercial and campus multi-unit installations where Applicants control the cables.

XIII. SBC/Ameritech Must Not Utilize CLEC Information to Target Winback Efforts

^{11/} *Pacific Bell*, Applications 85-01-0034, 87-01-002, Decision 92-01-023, 43 CPUC 2d 115 (Cal. PUC, rel. Jan. 10, 1992).

The Merger Conditions should prohibit SBC/Ameritech from utilizing information obtained through its wholesale operations for use in its retail marketing. The Commenters are concerned that ILECs appropriate confidential information gained through their carrier-to-carrier interactions with CLECs in order to select CLEC customers to target for their winback efforts. Through their control of the process of converting an end-user's local service, ILECs are uniquely positioned to obtain information about any consumer that chooses to switch to a CLEC. The use of this information violates the Commission's *Slamming Order*, which found that an ILEC may not abuse its position as the neutral executing carrier that processes switch requests by using such information for marketing purposes.^{12/}

In addition, the Commenters have been made aware of instances in which some incumbent carriers have directed winback efforts at customers of CLECs that are transitioning their means of providing service from resale to facilities-based UNEs, a conversion which is transparent to the customer. The Commission should prohibit the Applicants in their winback campaigns from making any misleading characterizations of this process or of the CLEC's services.

XIV. The Merger Conditions Should Apply in Connecticut and Nevada on the Same Schedule as All Other SBC/Ameritech States

The merger conditions propose to delay application of several conditions in Connecticut and Nevada. Connecticut and Nevada consumers need the same market opening protections as do

^{12/} *Implementation of the Subscriber Carrier Selection Changes Provisions of the 1996 Telecommunications Act of 1996*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, December 17, 1998,-- F.C.C.R. B, && 106-111.

the consumers in the other states SBC serves. Unless the Applicants offer more compelling justifications, the Commission should require the Applicants to implement all merger conditions on the same, earlier schedule.

XV. Conclusion

For these reasons, the Commenters urge that, if the proposed merger is approved, the Commission should strengthen and modify the proposed conditions as discussed above.

Respectfully submitted,

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Dated: July 19, 1999

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I hereby certify that a true and correct copy of the foregoing was mailed, prepaid, by U.S. mail, this 19th day of July, 1999, to the persons listed on the attached list.

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